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SERVICE DATE – DECEMBER 20, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 408X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY  
COMPANY–ABANDONMENT EXEMPTION–IN HAMILTON AND  
MERRICK COUNTIES, NE

Decided: December 17, 2004

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 15.60-mile line of railroad between BNSF milepost 1.90, near Aurora, and milepost 17.50, near Central City, in Hamilton and Merrick Counties, NE. Notice of the exemption was served and published in the Federal Register on March 22, 2004 (69 FR 13349-50). The exemption was scheduled to become effective on April 21, 2004, but on March 10, 2004, The Garden City Western Railway, Inc. (GCW), filed a notice of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) to purchase the entire line.<sup>1</sup> By decision served on April 21, 2004, the due date for GCW to submit its OFA was extended until May 21, 2004, and the effective date of the exemption was postponed until May 31, 2004.<sup>2</sup>

On April 30, 2004, BNSF filed a motion to amend its notice of exemption to remove a 2.47-mile segment of rail line located between milepost 1.90 and milepost 4.37 from the scope of its abandonment exemption. On May 10, 2004, GCW filed a request for permission to withdraw its notice of intent to file an OFA. By a decision and notice of interim trail use or abandonment (NITU) served on May 26, 2004: (1) the proceeding was reopened; (2) BNSF's motion to amend its notice of exemption to remove the 2.47-mile line segment from the scope of its abandonment exemption was

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<sup>1</sup> The filing of the notice of intent had the effect of staying the effective date of the exemption for 10 days until May 1, 2004. GCW's OFA would have been due by April 21, 2004 (49 CFR 1152.27(c)(2)(ii)(B)), but, in its March 10 filing, GCW also requested that the Board toll the period for GCW to submit its OFA for an additional 30 days.

<sup>2</sup> The April 21, 2004 decision also reopened the proceeding and imposed several environmental conditions, which remains in effect.

granted;<sup>3</sup> (3) GCW's withdrawal request was granted and the OFA process was terminated; (4) the exemption became effective on the decision's service date, subject to conditions; and (5) a 180-day period was authorized for the Nebraska Trails Foundation, Inc., and the Central City Community Trails Committee of Central City, NE (collectively, NTFI), to negotiate an interim trail use/rail banking agreement and to permit public use negotiations<sup>4</sup> with BNSF, for BNSF's line segment between milepost 4.37, near Aurora, and milepost 17.50, near Central City, NE, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The negotiating period under the NITU expired on November 27, 2004.

On December 2, 2004, NTFI filed a request to extend the NITU negotiating period for an additional 60 days, because more time is necessary to complete negotiations. By facsimile filed on December 16, 2004, BNSF concurs in the request to extend the NITU negotiating period.

Where, as here, the carrier has not consummated abandonment of the portion of the line subject to the NITU at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an extension of the negotiating period is warranted. *See Birt v. STB*, 90 F.3d 580, 588-90 (D.C. Cir. 1996); *Grantwood Village v. Missouri Pac. R.R. Co.*, 95 F.3d 654, 659 (8th Cir. 1996), *cert. denied*, 519 U.S. 1149 (1997). An extension of time will promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended for an additional 60 days from November 27, 2004 (until January 26, 2005).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the NITU negotiating period is granted for a period of 60 days (until January 26, 2005).

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<sup>3</sup> As modified, the abandonment exemption applied only to the line segment located between milepost 4.37, near Aurora, and milepost 17.50, near Central City.

<sup>4</sup> The public use condition, which is limited by statute to 180 days, has expired and may not be extended.

2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary